



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing and gave affirmed testimony however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call. The landlord testified that each of the 2 tenants was individually served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on November 17, 2016, and was permitted to provide proof of such service by facsimile after the hearing had concluded. I have now received a copy of a Canada Post cash register receipt bearing that date as well as 2 Registered Domestic Customer Receipts addressed to each of the tenants, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for subletting and using the swimming pool?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2014 and ended on September 30, 2016. Rent in the amount of \$1,650.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$825.00, all of which was returned to the tenants at their forwarding address within 2 weeks of the end of the tenancy. No pet damage deposit was collected. The rental unit is the upper level of a 2 level house, and the lower

level is also tenanted. The landlord lives on the property next door to the rental property, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenancy agreement specifies that the swimming pool is not included in the rent, and specifically states: "Use of pool is not included in the rent. Extra charge can be discussed later." During the summer of 2015 the tenants started to use the pool with friends and wanted the landlord to clean it. The landlord told the tenant he had to pay for its use. The landlord collected only \$10.00 for 2 months of electricity use. The landlord wanted \$300.00 per month, but the tenants didn't want to discuss it.

The landlord also testified that a lady lived in the rental property for a few months and the tenants said the lady was not a tenant. The landlord told the tenants that rent would be increased for another tenant, but the lady moved out and another person moved in.

The landlord claims \$500.00 per month for 1 year of subletting, or \$6,000.00; and \$2,700.00 for the pool use, which is just a guess and calculated at 9 months at \$300.00 per month over the 2-year period of the tenancy.

### Analysis

The landlord has applied for monetary compensation for the tenants' use of the swimming pool and for subletting. The onus is on the landlord to satisfy the 4-part test:

1. that the landlord suffered a monetary loss;
2. that the monetary loss was suffered because of the tenants' failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any loss suffered.

I have reviewed the tenancy agreement, and it clearly states that the pool is not included in the rent, but specifies that an additional charge will be discussed with the tenants. There was no discussion, no agreement as to the amount. The landlord could have provided a monthly amount in writing and the tenants could decide whether or not to agree. However, to claim now that the landlord wanted \$300.00 per month does not satisfy me that the landlord has established the amount the tenants would have paid or would have agreed to pay, or that the landlord did anything to mitigate any loss suffered. Nor am I satisfied that the landlord has established that the landlord suffered any monetary loss.

With respect to subletting, the tenancy agreement specifies that the tenants may assign or sublet with written consent of the landlord. I accept that the landlord didn't consent in

writing to a sublet. A sublet situation would require the sub-tenant to pay rent to the tenants, but there is no evidence before me to satisfy what, if any rent, the tenants collected from either of the individuals that were in the rental unit. Therefore, I am not satisfied that the landlord has established that the landlord has suffered a loss as a result of the tenants' failure to comply with the *Act* or the tenancy agreement, or what amount if any the tenants collected..

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 27, 2017

---

Residential Tenancy Branch